Fiscal Note 2011 Biennium

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Bill #	SB0277	**Title:**	Box store tax
Primary Sponsor:	Kaufmann, Christine	**Status:**	As Introduced

- ☐ Significant Local Gov Impact
- ☑ Needs to be included in HB 2
- ☑ Technical Concerns
- ☐ Included in the Executive Budget
- ☑ Significant Long-Term Impacts
- ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2010 Difference	FY 2011 Difference	FY 2012 Difference	FY 2013 Difference
Expenditures:				
General Fund	$434,735	$123,935	$127,033	$130,209
State Special Revenue (Box Tax)	$18,049,965	$18,483,164	$19,019,176	$19,494,655
State Special Revenue (I-149)	($9,446,254)	($8,746,327)	($8,049,149)	($7,190,912)
Revenue:				
General Fund	$18,049,965	$18,483,164	$19,019,176	$19,494,655
State Special Revenue	$18,049,965	$18,483,164	$19,019,176	$19,494,655
Net Impact-General Fund Balance:	$17,615,230	$18,359,229	$18,892,143	$19,364,446

Description of fiscal impact: This bill creates a gross receipts tax for retail locations that have more than $25 million dollars in gross receipts in a calendar year and compensate full-time entry-level employees with less than $23,000 annually. The rate is 1% for locations that have between $25 million and $35 million in gross receipts, 1.5% for locations with between $35 million and $45 million in gross receipts, and 2% for locations with more than $45 million in gross receipts. A portion of this tax will fund the small business health insurance program.

FISCAL ANALYSIS

Assumptions:

Department of Revenue

1. This bill creates a retail sales gross receipts tax that applies to retail outlets that have more than $25 million dollars in gross receipts annually. For locations with between $25 million and $35 million in retail gross receipts the tax rate is 1%, for locations with between $35 million and $45 million in gross receipts, the tax rate is 1.5%, and for locations with more than $45 million in annual gross receipts the tax rate is 2%.

2. Allowable cash discounts, uncollectible accounts, or final liquidation of accounts would be excluded from taxable gross receipts.
3. The tax is based on gross receipts for a calendar year.
4. Taxable establishments are those retailers who have entry-level compensation packages of less than $23,000 and have a workforce of which 50% are employed less than 40 hours per week. Data from the U.S. Bureau of Labor Statistics (BLS) show that in 2007 the average annual compensation for employees in general merchandise stores in Montana was $21,514. This is below the $23,000 annual compensation requirement, so all retail locations with more than $25 million dollars in gross receipts are assumed to be required to pay the tax.
5. Corporations report sales that are attributable to Montana on their Montana tax returns. A data set was created from the 2006 corporate tax database for only corporations with more than $25 million in retail sales in Montana. The number of retail locations in Montana for these corporations was determined using an internet based business directory. The average retail sales per location was calculated using the total Montana sales divided by the number of locations in Montana. This fiscal note assumes that the tax year matches the calendar year.
6. In 2006, there were less than ten corporations with average retail sales per location of greater than $25 million. The total gross receipts for these firms were $2,068 million. Using the average retail sales per location, total sales for each bracket were:

Annual Sales	Gross Receipts	% of GR
$25,000,000 to $34,999,999	$721,006,636	35%
$35,000,000 to $44,999,999	$0	0%
Greater than $45,000,000	$1,347,003,424	65%
Total	$2,068,010,060	100%

7. This bill allows taxpayers to subtract the cost of employer contributions for retirement benefits and health insurance for employees from gross receipts. Using data from the 2002 economic census it is estimated that a general merchandise store has 62 employees per location. There are 40 locations for the corporations in Montana that would be subject to this tax. There would be 2,480 employees employed at these retail locations.
8. Nationwide, the BLS estimates that 42% of employees in the retail sector participate in employer sponsored health programs and that the employer pays 76% of the premiums.
9. In a separate report, the BLS estimates that the average employer premium in 2006 was $266 a month.
10. In this fiscal note, it is assumed that the taxable establishments would be able to deduct $2.527 million from their gross receipts per year (2,480 x $266 x 12 x 76% x 42% = $2,526,838).
11. As shown in assumption 6 above, 65% of the gross receipts are from firms that have greater than $45 million in gross receipts and 35% are from firms with between $25 million and $35 million in gross receipts. Assuming that the benefits are paid in the same proportion as gross receipts, the following amounts would be deducted by taxable establishments:

Annual Sales	Gross Receipts		Deductions		Taxable GR
$25,000,000 to $34,999,999	$721,006,636	-	$880,976	=	$720,125,660
$35,000,000 to $44,999,999	$0	-	$0	=	$0
Greater than $45,000,000	$1,347,003,424	-	$1,645,862	=	$1,345,357,562
Total					$2,065,483,222

12. Using the tax rates specified in this bill, the tax revenues in 2006, had this bill been in effect, are listed in the table below:

Annual Sales	Taxable GR		Rate		Revenue
$25,000,000 to $34,999,999	$720,125,660	x	1.00%	=	$7,201,257
$35,000,000 to $44,999,999	$0	x	1.50%	=	$0
Greater than $45,000,000	$1,345,357,562	x	2.00%	=	$26,907,151
Total					$34,108,408

13. The average consumer price index for all urban consumers (CPI-U) is a widely used measure of inflation published by the BLS. In 2006, the CPI-U was 201.6 and the average for 2008 was 215.303. Inflation was 6.8% (215.303/201.6 -1) Assuming sales at taxable establishments grew at the same rate, there would have been $36.428 million in tax revenue for 2008 ($34.108 x 1.068) had this tax been in place.
14. The official revenue estimates assume inflation will be -0.9% in 2009, and 2.4% and 2.9% in 2010 and 2011, respectively. The Governor’s Office of Budget and Program Planning assumes inflation in 2012 will be 2.5%. Using these inflation rates, tax revenue will be $36.100 million for 2009 ($36.428 x 0.991), $36.966 million for 2010, $38.038 million for 2011 and $38.989 million for 2012.
15. This bill has an immediate effective date and applies retroactively to retail sales after December 31, 2008. This tax would be collected on retail sales beginning in 2009.
16. The tax revenue is due January 31 of the following year, so tax revenue from calendar year 2009 would impact general fund revenue in FY 2010.
17. The tax revenue is distributed 50% to the state general fund and 50% to the state special revenue account for health and Medicaid initiatives.
18. This bill would increase general fund revenue by $18.050 million in FY 2010 ($36.100 x 50%), $18.483 million in FY 2011, $19.019 million in FY 2012 and $19.495 in FY 2013. State special revenue would increase by the same amounts.
19. This bill would create a new tax type. A new tax type would need to be added to GenTax, the computer software used to administer state taxes. Adding a tax type to GenTax would be a one-time only cost of $300,000 for development and testing.
20. The department would hire one additional FTE to verify the tax increments and insure that the filed amounts are accurate. One half of an FTE would be hired to write administrative rules and handle any litigation for this tax. Wages and benefits for the additional 1.5 FTE would be $107.143 per year, with an inflation factor of 2.5% applied in FY 2012 and FY 2013. Operating expenses cover the rental of office space, phone lines, internet service, supplies, development of a tax form, and after the first year, $600 for PC replacement, totaling $16,792 per year. Personnel-related costs that only occur in the first year are for office and computer equipment and computer and phone installation, totaling $11,400 in FY 2010.

State Auditor’s Office (SAO)

21. Currently the small business health insurance program is funded from a portion of the cigarette tax that is deposited into the “Health and Medicaid Initiatives” State Special Revenue. This bill creates a new tax and dedicates it to expanding funding for the program.
22. The box store tax is estimated to generate revenues in the amounts $18,049,965 for FY 2010, $18,483,164 FY 2011, $19,019,176 FY 2012, and $19,494,655 FY 2013.
23. There are currently 600+ businesses on the purchasing pool waiting list currently costing approximately $654 per month per business. Applications will continue to be submitted and it is assumed by July 1, 2009 the program will have 700 businesses on the waiting list. The cost to add 700 businesses plus remove the 2007 caps on the subsidy payments is $6,676,068 for fiscal year 2010 and increasing by 8.15% each year thereafter.

24. There are currently 100+ businesses on the tax credit program waiting list. Applications will continue to be received and it is assumed by July 1, 2009 the program will have 150 businesses on the waiting list. The cost to add 150 tax credit businesses is $5,478 per year or approximately $821,700 for fiscal years 2010, 2011, 2012 and 2013.
25. Current purchasing pool benefits are capped at 2007 levels; if the caps are removed the calendar 2009 benefits would be $534,556 monthly and increase by 8.15% for each calendar year 2010 through 2013. This reflects an increased appropriation of $980,699 in fiscal year 2010, $1,576,877 in fiscal year 2011, $2,221,643 in fiscal year 2012 and $2,918,957 in fiscal year 2013.
26. SAO is requesting two full time employees; one for the increase in businesses participating in the program and one to complete case file audits. Estimated personal services and operating costs including electronic file transmittal notices mailings are approximately $125,244 for FY 2010, $118,094 for FY 2011, $121,047 for FY2012, and for $124,072 FY 2013.

	FY 2010 Difference	FY 2011 Difference	FY 2012 Difference	FY 2013 Difference
Fiscal Impact:				
Department of Revenue				
FTE	1.50	1.50	1.50	1.50
Expenditures:				
Personal Services	$107,143	$107,143	$109,822	$112,567
Operating Expenses	$316,192	$16,792	$17,212	$17,642
Equipment	$11,400	$0	$0	$0
TOTAL Expenditures	$434,735	$123,935	$127,033	$130,209
Funding of Expenditures:				
General Fund (01)	$434,735	$123,935	$127,033	$130,209
Revenues:				
General Fund (01)	$18,049,965	$18,483,164	$19,019,176	$19,494,655
State Special Revenue (02)	$18,049,965	$18,483,164	$19,019,176	$19,494,655
TOTAL Revenues	$36,099,930	$36,966,328	$38,038,352	$38,989,310
Fiscal Impact:				
State Auditor's Office (SAO)				
FTE	2.00	2.00	2.00	2.00
Expenditures:				
Personal Services	$92,826	$92,926	$95,250	$97,631
Operating Expenses	$32,418	$25,168	$25,425	$25,688
Benefits				
PP Waiting List 700 busines	$6,676,068	$7,220,168	$7,808,612	$8,445,014
TC Waiting List 150 busine	$821,700	$821,700	$821,700	$821,700
Remove 2007 PP Caps 767	$980,699	$1,576,877	$2,221,643	$2,918,957
TOTAL Expenditures	$8,603,711	$9,736,839	$10,972,630	$12,308,990
Funding of Expenditures:				
State Special Revenue-Box T	$18,049,965	$18,483,164	$19,019,176	$19,494,655
State Special Revenue-I149	($9,446,254)	($8,746,327)	($8,049,149)	($7,190,912)
TOTAL Funding of Exp.	$8,603,711	$9,736,837	$10,970,027	$12,303,743
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	$17,615,230	$18,359,229	$18,892,143	$19,364,446
State Special Revenue (02)	$9,446,254	$8,746,327	$8,049,149	$7,190,912

Long-Term Impacts:

1. The amounts of $25 million, $35 million and $45 million are not tied to inflation, so as time passes more retail locations will be affected by this legislation, all else constant.

2. The amount of $23,000 of entry level compensation is not tied to inflation, so as time passes fewer retail locations will be affected by this legislation, all else constant.

Technical Notes:

1. This bill specifies that receipts from the sale of gasoline are not included in gross receipts, but it does not mention diesel fuel. This causes complexity in administering the tax because the vendor would have to track the gross receipts from one type of fuel sold and not another.
2. The tax revenue is due January 31 of the following year. This may not provide some taxpayers with time to assess tax liability. Providing more time may reduce the number of amended returns that are processed.
3. Section 1 (1)(b) states that farm implements are not consumer goods. If a facility has $20 million in gross receipts from consumer goods and $5 million in gross receipts from farm implements they may be subject to the tax on $20 million of gross receipts or they may not be subject to any tax. The bill is not clear how this situation should be taxed.
4. It may be difficult to verify that the entry-level compensation package is above $23,000 per year.
5. A retail location is subject to the tax if over 50% of the employees are part time. The department would need data from all employee records in order to make this determination.

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*